

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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EON SHEPHERD,

Petitioner,

-against-

MEMORANDUM & ORDER
20-CV-0602 (EK) (LB)

MARK ROYCE,

Respondent.

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ERIC KOMITEE, United States District Judge:

On January 29, 2020, Eon Shepherd ("Petitioner"), currently incarcerated at Green Haven Correctional Facility, filed this *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging a Kings County judgment of conviction for robbery in the second degree, upon his guilty plea, under Indictment No. 1985/86 entered on May 22, 1987. (Pet. for Writ of Habeas Corpus ("Pet."), ECF Doc. 1 at 1.)¹ Petitioner paid the filing fee to commence this action. The Court dismisses the petition for lack of jurisdiction.

Section 2254 authorizes federal courts to "entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). "This provision 'requir[es] that the habeas petitioner be 'in custody' under the conviction or sentence under attack at the time his petition is filed.'" *Finkelstein v. Spitzer*, 455 F.3d 131, 133 (2d Cir. 2006)

¹ The petition was not signed by Petitioner and the Clerk of Court issued a notice of deficiency. (ECF Doc. 2.) On February 18, 2020, Petitioner filed a signed petition. (ECF Doc. 4.)

(quoting *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989)); see also *Nowakowski v. New York*, 835 F.3d 210, 215 (2d Cir. 2016).

When a petitioner's sentence for a conviction has fully expired, the conviction may not be challenged because the petitioner is no longer "in custody" pursuant to that conviction. See *Lackawanna County Dist. Att'y v. Coss*, 532 U.S. 394, 401-02 (2001); see also *Maleng*, 490 U.S. at 491. Here, Petitioner challenges a one-year sentence entered in 1987. It is clear that the one-year sentence had fully expired when Petitioner filed this petition on January 29, 2020, more than thirty years later.

CONCLUSION

Accordingly, the petition for a writ of habeas corpus is dismissed for lack of jurisdiction as Petitioner seeks to challenge a conviction that has fully expired. A certificate of appealability shall not issue as Petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The Court certifies pursuant to 28 U.S.C. § 1915(a) that any appeal would not be taken in good faith and therefore *in forma pauperis* is denied for the purpose of any appeal. See *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to enter judgment and close this case.

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: March 19, 2020
Brooklyn, New York